



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 444

IN THE MATTER OF FREDERICK FORESTEIRE

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Frederick Foresteire (Mr. Foresteire) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On July 11, 1991, the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, involving Mr. Foresteire, the Everett School Superintendent. The Commission concluded that inquiry and, on March 12, 1992, found reasonable cause to believe that Mr. Foresteire violated G.L. c. 268A, §'23(b)(2) and 23(b)(3).

The Commission and Mr. Foresteire now agree to the following findings of fact and conclusions of law:

1. At all times relevant to this matter, Mr. Foresteire was the Superintendent of the Everett Schools, and as such, a municipal employee as defined in G.L. c. 268A, §1(g). As superintendent, Mr. Foresteire was directly accountable to the Everett School Committee (School Committee). The superintendent's duties include directing and supervising the entire school system (teachers, maintenance, and support staff) and working on the school department budget. Additionally, the superintendent, as the secretary of the School Committee, makes recommendations but has no vote on the School Committee.

2. At all times relevant to this matter, John Shay (Shay) was a School Committee member. As a School Committee member, Shay's responsibilities include determining Everett School Department (School Department) policy, discussing and voting on budgetary matters and annually voting on various personnel matters.

3. In April 1990, Shay was in the process of moving into a new apartment. On April 4, 1990, Shay telephoned Mr. Foresteire to discuss School Committee matters. During that conversation, Shay told Mr. Foresteire that he was having trouble with the workers he had hired to paint his new apartment and that he feared the apartment would not be ready for the upcoming weekend move.

4. The next day, Mr. Foresteire approached a School Department painter (painter) who was working in the school administration building and asked him to take a look at Mr. Shay's apartment and provide advice as to what could be done to finish on time.

5. Later that day, Mr. Foresteire and the painter travelled to and examined Mr. Shay's apartment. The painter told Mr. Foresteire that a significant amount of work needed to be done prior to the weekend move. The painter agreed to assist in the apartment painting and requested a personal day, which Mr. Foresteire granted.^{1/}

6. Over the next three days, the painter worked over 22.5 hours and expended approximately \$300 in labor and supplies.^{2/} Prior to painting Shay's apartment, the painter had never personally met Mr. Shay, although he knew he was a School Committee member.

7. Shay encountered the painter working in his apartment on two or three occasions. Shay became aware through these encounters that the painter was a School Department employee. Shay never offered to and ultimately never did compensate the painter.

8. On April 9, 1990, Mr. Foresteire approached the painter at the school and inquired as to whether he was compensated for his services. The painter informed Mr. Foresteire that he had not been compensated for his services.

9. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances,

to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties.

10. By soliciting the School Department painter's services for Shay, Mr. Foresteire acted in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that either Shay^{3/} or the painter could improperly influence or unduly enjoy his favor in the performance of his official duties. Therefore, Mr. Foresteire violated G.L. c. 268A, §23(b)(3).

Based on the foregoing facts, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Mr. Foresteire:

1. that he pay to the Commission the amount of two hundred and fifty (\$250.00) as a civil fine for violating G.L. c. 268A, 23(b)(3);
2. that he will act in conformance with the requirements of G.L. c. 268A in his future conduct as a municipal employee; and
3. that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in this or any related administrative or judicial proceeding to which the Commission is or may be a party.

Date: July 7, 1992

^{1/}A School Department employee is allocated two personal days a year.

^{2/}The painter worked in Mr. Shay's apartment on Thursday, April 5 from 4:00 p.m. to 10:30 p.m.; on Friday, April 6 from 7:30 a.m. until 3:30 p.m. (personal day); and on Saturday, April 7 from 8:00 a.m. to 4:00 p.m. for a total of approximately 22.5 hours. The estimated value of the labor is \$225. and the painter's own supplies is \$24.

^{3/}Shay's receipt of the free paint job also raises conflict of interest issues for Shay. *In re Shay*, 1992 SEC 589 (school committee member fined \$750 for violating §3 by receiving gratuitous paint job from subordinate school department employee).